

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
MIRIAM ABER.

Index No. 29946/08

Plaintiff,

-against-

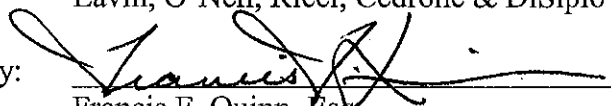
**NOTICE OF
REMOVAL PETITION**

AMERICAN SECURITY INSURANCE COMPANY,

Defendant.
-----X

PLEASE TAKE NOTICE that the above matter has been removed to the United States District Court for the Eastern District of New York. Attached hereto is a copy of the Notice of Removal Petition which was filed on February 6, 2009.

Dated: New York, New York
February 6, 2009

Lavin, O'Neil, Ricci, Cedrone & DiSipio
By: 
Francis F. Quinn, Esq.
Attorneys for Defendant
American Security Insurance Company
420 Lexington Avenue, Suite 2900
New York, New York 10170
(212) 319-6898
Our File No. 0591-94910

TO: Johnathan C. Lerner, Esq.
Abraham, Lerner & Arnold, LLP
Attorneys for Plaintiff
292 Madison Avenue, 22nd Floor
New York, New York 10017
212-686-4655

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

-----X
MIRIAM ABER

CIVIL ACTION:

Plaintiff,

-against-

AMERICAN SECURITY INSURANCE COMPANY,

Defendant.
-----X

NOTICE OF REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

1. On January 13, 2009 a letter dated January 6, 2009 enclosing a copy of a Summons and Complaint, attached hereto as Exhibit "A", was received by Defendant AMERICAN SECURITY INSURANCE COMPANY through a mailing by counsel for the Plaintiff in the above entitled action in the Supreme Court of the State of New York, County of Kings, entitled Miriam Aber v. American Security Insurance Company. The index number, which was previously procured by Plaintiff, is 29946/08. As described below, American Security Insurance Company (herein as "American Security") was not properly served with the Summons and Complaint before January 13, 2009.

2. This case is a civil action within the meaning of the Acts of Congress relating to the removal of cases for which the Court has original jurisdiction under the provisions of Title 28, United States Code § 1332(a)(1). Accordingly, this action may be removed to this Court by pursuant to the provisions of Title 28, United States Code § 1441(b).

3. 28 U.S.C. § 1332(a) provides in pertinent part as follows:

(a) The district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and cost, and is between - -

(1) Citizens of different states

4. Plaintiff states she is a resident of the State of New York. (See Complaint at ¶ 1).

5. American Security is an insurance company and corporation licensed and registered to do business in the State of New York. American Security has its principal place of business in Atlanta, Georgia, and is incorporated in the State of Delaware. (See Complaint at ¶ 2). For purposes of diversity jurisdiction, American Security is deemed to be a resident of the States of Georgia and/or Delaware. Therefore, complete diversity of citizenship exists between Plaintiff and American Security in this action in accordance with 28 U.S.C. § 1332(a).

6. Plaintiff seeks damages for alleged breach of an insurance policy issued by American Security in connection with a fire loss to real property located in Brooklyn, New York. The amount in controversy exceeds \$75,000.00. Specifically, Plaintiff seeks to damages for alleged breach of contract "in the sum of at least \$800,000.00." (See Complaint at ¶ 13 and Prayer for Relief).

7. The Summons and Complaint were filed on November 3, 2008. On November 5 2008, Plaintiff attempted to serve the Summons and Complaint through the New York State Department of Insurance by delivering a copy of the Summons and Complaint to the Department. (See Affidavit of Service dated November 6, 2008 attached as Exhibit "B").

8. On November 7, 2008 a notice of service from the State of New York Department of Insurance to American Security listed American Security's address as "W.A. Taffar, American Security Insurance Company, 3290 Northside Parkway, N.W., Atlanta, GA 30327". (See notice of service dated November 7, 2008 attached as Exhibit "C"). However, that information does not reflect American Security's current business address for service of process or American Security's principal place of business address. Rather, from and after September 1, 2004, American Security's location for service of process and its principal place of business have been at the following address: 260 Interstate N. Circle, NW, Atlanta, GA 30339-2111. Due to the use of the wrong address in this notice, the Summons and Complaint were not received by defendant through that mailing.

9. American Security's first notice or knowledge of the Summons and Complaint occurred no earlier than on January 13, 2009, when the January 6, 2009, letter from Plaintiff's counsel was delivered to a Post Office Box maintained by American Security via certified mail. This Notice of Removal is properly filed to effect removal of the action and vest jurisdiction with this Court within thirty (30) days of service of process of the Summons and Complaint on

American Security, and this removal has been accomplished within one (1) year after commencement of the action so as to be timely within the provisions of 28 U.S.C. § 1446 (b).

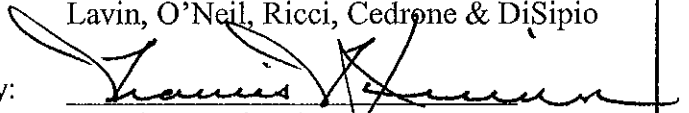
10. True and correct copies of all process, pleadings, and orders served upon American Security are attached hereto as Exhibit "A" in conformity with 28 U.S.C. § 1446(a). There are no other process, pleadings, or orders filed to date in this case. American Security has heretofore sought no similar relief.

11. Contemporaneously with the filing of this Notice of Removal, American Security has filed a copy of this Notice of Removal, together with Exhibits A, B and C, with the Clerk of Court, Supreme Court of New York, County of Kings, in accordance with 28 U.S.C. § 1446(d).

12. Because the parties are diverse, the amount in controversy exceeds \$75,000.00, and this Notice of Removal has been filed within the prescribed period after American Security's receipt of the Summons and Complaint, American Security respectfully pleads that this action has been removed from the Supreme Court, County of Kings to the United States District Court for the Eastern District of New York.

WHEREFORE, Defendant, American Security Insurance Company prays that the above action now pending against it in the Supreme Court of the State of New York, County of Kings, be removed therefrom to this Honorable Court, that this Court take jurisdiction of this action and issue all necessary orders and process regarding the removal of this action, and that any further proceedings in the Supreme Court of New York, County of Kings in this action be hereby stayed until further order of this Court.

Dated: New York, New York
February 6, 2009

By:  Lavin, O'Neil, Ricci, Cedrone & DiSipio
Francis F. Quinn (5787)
Attorneys for Petitioner/Defendant
AMERICAN SECURITY INSURANCE
COMPANY
420 Lexington Avenue, Suite 2900
New York, New York 10170
212-319-6898
Our File No. 0591-94910

TO: Johnathan C. Lerner, Esq.
Abraham, Lerner & Arnold, LLP
Attorneys for Plaintiff
292 Madison Avenue, 22nd Floor
New York, New York 10017
212-686-4655